No.10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[chapter VIII, Rule 32 (2) (b)]

Description of Case.

W.P. No. 46 of 2000 (M/S)

S.C. Anand Vs. R.C. and E.O. and others.

With

W.P. No. 45 of 2000(M/S)

S.C. Anand Vs. District Judge Dehradun

and others.

A.F.R. (Approved for Reporting)

Not Approved for Reporting

(B.S. Verma, J.)

Initials of Judge

Date: 22-04-2006

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 46 of 2000
Old CMWP No. 33835 of 1990.

S.C.Anand, Son of late R.S.Hari,
Owner of Clearance House VII Kulri, Musoorie,
Dehradun. … **Petitioner.**

Versus

1. Rent Control & Eviction Officer Mussoorie, Dehradun.
2. Ganga Dhar Resident of Nirmal Ashram Mussoorie.
3. Dinesh Nautiyal Son of late Prem Dutt Nautiyal, Resident of Prem Restaurant, Kulri, Mussoorie.

… **Respondents.**

Sri Alok Singh, Sr.Adv., assisted by Sri Gopal Narain, Advocate, learned counsel for the Petitioner.
Sri Nand Prasad, Leanrd Standing Counsel for the respondent no. 1.
None appeared on behalf of respondent nos. 2 & 3.

With

Writ Petition (M/S) No. 45 of 2000
Old CMWP No. 25892 of 1990.

S.C. Anand Son of late R.S. Hari,
Owner of Clearance House VII Kulri, Mussoorie,
Dehradun. … **Petitioner.**

Versus

1. District Judge, Dehradun.
2. Rent Control & Eviction Oficer, Mussoorie, Dehradun.
3. Ganga Dhar Resident of Nirmal Asharam Mussoorie.
4. Dinesh Nautiyal Son of late Prem Dutt Nautiyal, Resident of Prem Restaurant, Kulri, Mussoorie.

… **Respondents.**

Sri Alok Singh, Sr.Adv., Assisted by Sri Gopal Narain, Advocate, learned counsel for the Petitioner.
Sri Nand Prasad, Learned Standing Counsel for the respondent no. 1.
None appeared on behalf of respondent nos. 2 & 3.

Date: April 22, 2006.

(Hon'ble B.S. Verma, J.)

Since in both the writ petitions the parties to the proceedings are the same and the dispute pertains to the same suit premises and points for determination of controversy are same, therefore, for the sake of convenience, both the writ petitions are being decided by this common judgment.

Writ Petition No. 46 of 2000 has been filed by the petitioner-landlord for quashing the order dated 4.1.1990 passed by the Rent Control and Eviction Officer (***for short R.C. & E.O.)*** whereby he declared disputed premised Flat No.3, Clearnce House Kulri, Mussoorie as vacant under Section 12 of the U.P. Act No. XIII of 1972 (***for shot the Act)*** and invited applications for allotment thereof by 10-1-1990, while Writ Petition No. 45 of 2000 has been preferred by the petitioner-landlord for quashing the order dated 4.1.1990,and 30.1.1990 passed by the respondent no.2-Rent Control & Eviction Office as well as the judgment and order dated 25-7-1990 passed by the District Judge Dehradun dismissing the revision of the landlord challenging the order of vacancy as well as the order of allotment dated 4.1.90 and 30.1.1990 respectively.

Brief facts giving rise to these writ petitions are that the petitioner S.C. Anand is admittedly the landlord-owner of Flat No.3, Clearance House, Kulri, Mussoorie, which comprised one big room with attached latrine. The big room has been divided into two portions by partition. The respondent Dinesh Nautiyal moved an application for allotment on 8-10-1987 before the R.C. & E.O. who directed the Rent Control Inspector for spot inspection and report. The Rent Control Inspector submitted his report on 17.11.1987, who made the inspection of the suit premises in presence of the landlord, Beer Singh occupant of the flat and the prospective allottee Dinesh Nautiyal. It was noticed that Beer Singh was occupying the accommodation since December 1975 without

having any allotment order. He was paying rent to the petitioner. Rajpal Singh was son of Beer Singh, who was said to the tenant of the flat. This Rajpal Singh had left the country and went to Australia with his children and was running some business there. The possession of Beer Singh was unauthorized. Hence the R.C. & E.O. declared the vacancy vide his order dated 4.1.1990 and applications for allotment were invited. There applications were received, one was of Dinesh Nautiyal, the other one of Ganga Dhar (who been arrayed as respondents) and the third one of Rashid Ahmad, who did not press his application for allotment lateron. The contest for allotment of flat was confined between Dinesh Nautiyal and Ganga Dhar. In the mean time, the landlord-petitioner moved an application under the provisions of Section 21 (1)(a) of the said Act for release of the accommodation for his personal need. He arrayed Beer Singh as the tenant and Prescribed Authority Case No. 5 of 1988 was registered. The record reveals that the application for release was filed much after the report of the Rent Control Inspector was filed on 17-11-1987. This P.A. Case No. 5 of 1988 was decided and the flat in question was released in favour of the petitioner-landlord on 8-3-1989 and possession was delivered to him by Beer Singh on 9.3.1989. The order passed by the Prescribed Authority releasing the suit premises was brought to the notice of R.C. & E.O. by Beer Singh himself and it was prayed by him that the proceedings for declaring he vacancy and allotment etc. be dropped. Dinesh Nautiyal contested the proceedings before the Prescribed Authority on the ground that there was collusion between the landlord and the unauthorized occupant Beer Singh. The R.C. & E.O. ignored the order of the Prescribed Authority and declared the vacancy of the suit premises vide order dated 4.1.1990 and finding the need of the applicant Gangadhar more genuine as compared to the need of Dinesh Nautiyal, allotted the premises in favour of Ganga Dhar vide order dated 30-1-1990. Aggrieved by the said orders, the landlord has preferred R.C. Revision No. 19 of 1990, S.C. Anand Vs. Gang Dhar. Dinesh Nautiyal also filed Revision No. 40 of 1990 before the District Judge. The District

Jude after hearing both the parties and perusing the record, did not find favour with the landlord and dismissed the revision and by a common judgment dated 25-7-1990 allowed the revision preferred by Dinesh Nautiyal challenging the order of allotment dated 30.1.1990 and remanded the case to the Rent Control and Eviction Office. Dissatisfied by the order of dismissal of revision no. 19 of 1990, the landlord has come up before this Court.

As mentioned earlier, the landlord has challenged the order dated 4.1.1990 declaring the vacancy by the R.C. & E.O. by way of Writ Petition No. 46 of 2000 and by means of Writ Petition No. 45 of 2000, he has challenged the order declaring the vacancy dated 4.1.1990 and order of allotment dated 30-1-1990 passed by R.C. & E.O. as well as order of dismissal of revision on 25-7-1990, which was preferred by the landlord before the District Judge.

I have heard Sri Alok Singh, Senior, Advocate, assisted by Sri Gopal Narain, advocate, learned counsel for petitioner as well as learned Standing Counsel for the State Sri Nand Prasad. None has appeared on behalf of the private respondents.

The record shows that on the application for allotment moved by Dinesh Nautiyal, the R.C. & E.O. ordered the Rent Control Inspector to make the spot inspection and report, who visited the premises in question on 17.11.1987 and submitted his report on 20-12-1987. He was accompanied by Dinesh Nautiyal, occupant Sardar Beer Singh , Bhawan Singh and the landlord. In his report he had given the details of the accommodation. He has clearly mentioned that the premises were in the occupation of Rajpal, son of said Beer Singh, who had left for Australia along with his family. The R.C.I. reported that at that time the said Beer Singh was residing there, who is said to be leaving Mussoorie after some time.

Objection were invited on the basis of the report from all the concerned persons. Landlord filed his objection on 29-4-1988 and stated that the premises in question is not Flat No. 3 but it is Flat no. 7. None else filed objection.

The applicant Dinesh Nautiyal led evidence in support of his application by filing affidavit. The contention of the applicant was further substantiated by the affidavit of Bhakti Ram Nautiyal. On the other hand, the landlord also filed this affidavit along with the affidavit of occupant Beer Singh. The prospective allottee filed his reply against the affidavits of landlord and Beer Singh. He also filed certified copy of sale-deed dated 30-6-1986 executed in favour of Beer Singh in which the address of Beer Singh is mentioned as 67 Rajpur Road Dehradun and Rajpal Singh has been shown to be tenant of the purchased premises. In the means time when the proceedings were going on before the R.C. & E.O., the landlord moved an application for release of the accommodation before the Prescribed Authority and on the basis of compromise between landlord and Beer Singh, the premises were released in favour of the landlord and possession was delivered on 9-3-1989. The landlord filed certified copy of the release order before the R.C. & E.O. The R.C. & E.O. in view of the provisions of the Rent Control Act and in the light of the law ultimately declared the vacancy under Section 12 of the said Act and invited applications for allotment by 10-1-1990 vide his order dated 4-1-1990. Subsequently, vide order dated 30.1.1990, the premises were allotted in favour of Ganga Dhar. Aggrieved by the orders, the landlord-petitioner filed Revision No. 19 of 1990 before the District Judge. It was submitted before the revisional court by the landlord that the R.C. & E.O. acted illegally and without jurisdiction in declaring the vacancy. The contention was that the R.C. & E.O. had no jurisdiction to declare the vacancy after an order under Section 21(1)(a) of the Act is passed by the Prescribed Authority. As narrated earlier the proceedings under Section 12 of the Act and started much earlier and the application under Section 21(1)(a) of

the Act was moved during the pendency of the proceedings wherein he was participating and had admittedly filed his affidavit as well as that of Beer Singh, the occupant of the premises on 5.8.1987.

Regarding vacancy, the District Judge has found that the landlord had taken shifting stand in the matter. According to the landlord, Rajpal Singh S/O Beer Singh was his tenant and Beer Singh was making payment of rent on behalf of his son. Admittedly, Rajpal Singh had Shifted to Australia. The District Judge has given finding of fact that a deemed vacancy had come into existence and the R.C. & E.O. was justified in declaring the vacancy of the premises in question. The District Judge has discarded the contention that no notice was given to the landlord declaring the vacancy or passing the order of allotment. As observed above and according to the case of the petitioner himself, the landlord had participated in the proceedings before the R.C. & E.O. and it has not been challenged that the landlord was not present at the time of inspection by the Rent Control Inspector.

It has been vehemently argued on behalf of the petitioner that the Rent Control and Eviction Officer committed manifest error of law in ignoring the release order passed by the Prescribed Authority on the application under Section 21(1)(a) of the Act. The learned counsel for the petitioner placed reliance upon the judgment of Allahabad High Court in the case of ***"Smt. Shanti Devi V. V Additional District Judge Bulandshahr and others" [1987(2) A.R.C., page 130],*** wherein it was held in paragraph 7 that "Section 21 of the Act provides that the Prescribed Authority, may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy and any specific part thereof if it is satisfied that the building is bona fide required by the landlord for occupation by himself or any member of his family or any person whose benefit it is held by him for residential purpose. Under Section 23 of the Act, the Prescribed Authority has been empowered to enforce the order of release

passed under Section 21 of the Act. Object of Sections 21 and 23 of the Act is that the landlord in whose favour the application under Section 21 of the Act has been allowed and the release order has been passed, is entitled to get possession of the property. Once the landlord is entitled to get possession of the property, the question of declaring it as vacant for the purposes of allotment does not arise." In this case, judgment of the Allahabad High Court in *Sultan Ahmad V. Prescribed Authority* reported in ***1984(1) ARC 283*** was followed, wherein it was held as under:

"It is settled law that if an application for release under Section 21(1) of the Act is made, the landlord is not called upon to obtain a further order of release from the Rent Control and Eviction Officer nor has the said officer any jurisdiction to allot the accommodation to anyone else."

Learned counsel has vehemently argued that the learned R.C. & E.O. has acted illegally and without jurisdiction in declaring the vacancy of the flat in question in spite of the fact that the flat in question had been released in favour of the landlord. It is pertinent to mention here that the petitioner had also placed reliance on the said judgment of the Allahabad High Court before the District Judge. The learned District Judge has held that the judgment relied upon by petitioner-landlord has to be confined to a particular facts of the case only. It does not lay down a principle of universal application. This fact cannot be lost sight of that the landlord moved application under Section 21(1)(a) of the Act in the instant case. Knowing it fully well that the proceedings for declaring vacancy were pending before the R.C. & E.O., which were initiated in the year 1987 when Dinesh Nautiyal moved an application for allotment. It was further held by the District Judge that the landlord moved an application before the Prescribed Authority under Section 21(1)(a) against a person who is not the tenant but an unauthorized occupant and no reference was made in the release application that proceedings were pending before the R.C. & E.O. The release application was not decided on merit and

has been decided on the basis of compromise arrived at between the landlord and unauthorized occupant, and it was held that it was a case of collusion between S.C. Anand and Beer Singh, an unauthorized occupant. Recourse was available to the landlord to move application under Section 16(1)(b) of the Act No. 13 of 1972 for release of accommodation in question, therefore the learned R.C. & E.O. was justified in not taking into consideration the release order passed by the Prescribed Authority.

I have perused the application for compromise moved by the petitioner and beer Singh and on the basis of the compromise order dated 8-3-1999 was passed by the Prescribed Authority (Annexure 7 to the writ petition). It reveals that the Prescribed Authority did not give any finding whether the need of the landlord was bona fide or not. The Prescribed Authority only accepted the compromise and decided the application in terms of the compromise application, 11-A. The Prescribed Authority had committed a manifest error of law in not recording a finding whether the compromise was lawful agreement. It was the duty of the Prescribed Authority to see whether the compromise agreement was a lawful agreement. It is provided in Section 34(1)(f) of the Act that an authority shall have the power to record a lawful agreement, compromise or satisfaction. It would, therefore, be seen that only lawful compromise could be recorded. Lawful refers to the legality of the terms of the agreement and excludes an agreement prohibited by law or that which is opposed to a public policy. As detailed above, in the case in hand, the proceeding under Section 12 was pending prior to the filing of release application. In the compromise application, no reference was made by the petitioner regarding the said proceeding, though he participated in the proceedings before the R.C. & E.O. In fact the proceedings taken under Section 21 of the Act were collusive as held by the learned District Judge. An application under Section 21 can be moved only against a sitting tenant. The case under Section 16 of the Act is all together different. If the vacancy occurred, in

that case the provision for release has been provided under Section 16 of the Act. As such on the date of the compromise application, the vacancy had already occurred because the sitting tenant had gone abroad. The District judge has held that Beer Singh is an unauthorized occupant and no compromise could be entered into by an unauthorized occupant. It is thus clear that the District Judge has rightly held that the compromise was collusive and the Prescribed Authority did not consider the need of the petitioner while accepting the alleged compromise. The Rent Control and Eviction Officer as well as the District Judge has recorded a finding of fact regarding the existence of vacancy and this court in exercise of writ jurisdiction cannot re-appreciate the evidence and record its own finding. The material on record is sufficient to show that release order has been obtained by suppressing the facts on record and that too on the basis of a collusive compromise. There is no finding of the Prescribed Authority on record to show that bona fide need of the landlord was found or examined at all.

In the case of ***Smt. Kusum Gupta V. II Addl. District Judge, Kanpur)1983(1), A.R.C. page 656),*** it has been held by the Allahabad High Court that ***"The object of the Act being to control letting, while considering the question of lawful nature of the compromise, the Prescribed Authority is required to find if the acceptance of need by the tenant of the landlord was mala fide or not. If the landlord succeeds in obtaining a compromise in this proceeding by colluding with the tenant, the same would be unlawful being against the policy behind the Act. Under Section 21 a landlord can get a release order only when his need has been found to be bona fide. But, where such a need is not bona fide and is tried to be established by the landlord on the basis of fraudulent or collusive compromise, the Prescribed Authority would be entitled to refuse toe decide the application on its basis. In such an even, the compromise would be void and that question can be gone into in the proceedings under Section 16."***

The District Judge as well as the R.C. & E.O. were fully justified in not considering the release order obtained by the petitioner-landlord by suppressing the facts and by way of collusion, as mention earlier.

Having gone through the entire material on record and perusing the impugned orders from all the four corners, it is sufficiently proved that the finding of fact regarding vacancy recorded by the courts below does not suffer form any manifest error of law, rather it comes out that the finding is based on the evidence on record. The District Judge has given reason for upholding the order of vacancy passed by the R.C. & E.O. in my view, both the courts below have not committed any illegality or manifest error of law in passing the impugned order of declaring vacancy and dismissing the revision filed by the landlord-petitioner. The District judge has considered each and every point in his judgment, which have been challenged in the present writ petitions. The findings recorded by the courts below declaring the vacancy under Section 12 of the Act do not call for interference by this Court.

Both the writ petition have no force and must fail.

Both the writ petitions are dismissed on merit. No order as to costs. However, it is provided that the petitioner-landlord may file release application, if he so likes, under the provision of Section 16(1)(b) of the Act before the Rent Control & Eviction Officer and the R.C. & E.O. shall decide the release application first and shall then proceed with allotment proceedings of the premises in question. To this extent alone, the impugned order dated 25-7-1990 passed by the District Judge stands modified.

(B.S. Verma, J.)

RCP